

APEX SCHOOL OF THEOLOGY,
Plaintiff,
v.
ELISABETH DEVOS, SOLELY IN HER
OFFICIAL CAPACITY AS SECRETARY OF
THE UNITED STATES DEPARTMENT OF
EDUCATION,
Defendant.

Case No. 1:19-cv-955

4. ASOT was founded in 1995 as a religious institution of higher education offering undergraduate and graduate level theological education. ASOT offers an Associate Degree in Christian Education, a Bachelor Degree in Theology, Masters Degrees in Christian Education, Christian Counseling, and Divinity, and a Doctorate of Ministry.

5. Since it was founded in 1995, ASOT has delivered quality education. ASOT has awarded more than 500 undergraduate degrees, more than 300 graduate degrees, and approximately 50 post-graduate degrees.

6. As part of its Christian mission, ASOT endeavors to teach low-income students and to deepen their ties to the Christian community.

7. ASOT has not raised its tuition in almost fifteen (15) years.

8. The considerable majority of ASOT's students are from low-income backgrounds and many are in need of substantial student financial aid ("FSA"). In fact, nearly all of ASOT's students receive some form of FSA and without FSA, many ASOT students would not be financially capable of continuing their theological education.

9. ASOT has participated in FSA programs for approximately 19 years. On November 21, 2017, the Department of Education ("DOE") sent a letter to ASOT confirming that ASOT was eligible to participate in FSA programs, including the Federal Pell Grant program and Federal Direct Loans. A true and accurate copy of the November 21, 2017 correspondence is attached hereto as **Exhibit A**.

10. Also in November 2017, ASOT executed a Program Participation Agreement with DOE that authorizes ASOT to participate in the Federal Pell Grant program and Federal Direct Loans, among other things. A true and accurate copy of the Program Participation Agreement is attached hereto as **Exhibit B**.

11. Prior to December 2018, ASOT did not advance its institutional funds to students to pay their FSA. Rather, it first requested the funds from DOE and then disbursed those DOE funds to students.

12. ASOT is located in Durham, North Carolina, where it has a main campus. Classes at the main campus are taught in-person and online.

13. In addition to the main Durham campus, ASOT has several off-site locations in other cities and States. The off-site locations are only loosely affiliated with the main campus and they are owned and operated by independent contractors.

14. In early 2017, well prior to the execution of the PPA and DOE's letter confirming ASOT's eligibility to participate in FSA, the Office of Inspector General ("OIG") initiated an investigation into one of ASOT's off-site locations in Columbus, Georgia (the "GA Site"). In connection with its investigation, the OIG has asked ASOT's main campus for records concerning the director and the students at the GA Site.

15. ASOT closed the GA Site on June 1, 2018. Prior to closure, ASOT never controlled the day-to-day operations of the GA Site.

16. The director of the GA Site was never an employee of ASOT. Rather, she was an independent contractor and only worked at the GA Site. ASOT has terminated its relationship with the director of GA Site.

17. In February 2017, OIG executed a search warrant at ASOT's main campus in Durham, North Carolina. In connection with my role as Executive Assistant to the President, I received a copy of the search warrant and reviewed it. The search warrant indicated it was limited to records regarding the GA Site.

18. It is my understanding that the OIG Investigation does not concern ASOT's Spring semester 2019 FSA. Indeed, the OIG Investigation was launched more than two years prior to Spring semester 2019 and the GA Site closed prior to the Spring semester 2019.

19. ASOT has endeavored to fully cooperate with the OIG's investigation of the GA Site, including producing documents. I am unaware that OIG has ever expressed an indication that ASOT is less than fully cooperating with the investigation.

20. Since the OIG began investigating the GA Site in early 2017, I am unaware that any person (associated with ASOT or otherwise) has been charged with a crime, faced civil action, or received a penalty in connection with the OIG investigation.

21. On or about December 18, 2018, DOE sent ASOT a letter (the "HCM2 Letter") stating that it was revising ASOT's FSA participation to "heightened cash monitoring." In my role at ASOT, I received a copy of the HCM2 letter and I reviewed it. A true and accurate copy of the HCM2 Letter is attached hereto as **Exhibit C**.

22. In the HCM2 Letter, DOE stated that ASOT “may continue to obligate funds under the federal student financial assistance programs authorized by Title IV of the Higher Education Act.... [ASOT] may disburse institutional funds to eligible students. If [ASOT] disburses institutional funds, [DOE] will reimburse it for properly documented expenditures.” Exhibit C, p. 1. I relied on DOE’s statements in this letter, and I understood that ASOT could provide FSA to its students and, if it did, DOE would reimburse ASOT.

23. When students apply for FSA and DOE approves them, a DOE contractor sends a “Student Financial Aid Award Notice / Disclosure Statement” (“Award Notice”) to the students and sends a copy to ASOT. In my role as Executive Assistant to the President, I receive and am familiar with the Award Notices that DOE’s contractor sends to ASOT. Attached hereto as **Exhibit D** is a compilation of true and accurate copies of certain Award Notices DOE’s contractor sent to ASOT’s undergraduate students receiving Spring semester 2019 FSA. Because the records are voluminous, I have attached a sampling of Award Notices. However, DOE’s contractor sent ASOT Award Notices for all or nearly all ASOT undergraduate students who received Spring semester 2019 FSA. For student privacy and pursuant to applicable law, student identifying information has been redacted from the attached Award Notices.

24. In the Spring semester 2019, ASOT processed FSA for its students.

25. In mid or late March 2019, I contacted Daniel Castellanos, an Institutional Review Specialist for DOE, regarding preparing an HCM2 submission. On March 22,

2019, Mr. Castellanos emailed asking to set a conference call to discuss. On March 25, 2019, I returned Mr. Castellanos' email and set up a call, which we later had. A true and accurate copy of my March 22, 2019 – March 25, 2019 email chain is attached hereto as **Exhibit E**.

26. After some further communication with DOE, on April 30, 2019, I submitted ASOT's HCM2 request for reimbursement concerning FSA funds ASOT disbursed to students for the Spring semester 2019. I sent the HCM2 submission to Mr. Castellanos via email, which included a Form 270, a list of undergraduate students receiving FSA and the calculations of their Federal Pell Grants and Federal Direct Loans. The Form 270 was also sent by hard copy. I also sent by email a sample of the required hard copy documentation for one student to verify its accuracy in preparation for gathering the required hard copy documentation for all the students in the submission. A true and accurate copy of my email transmitting the April 30, 2019 HCM2 is attached hereto as **Exhibit F**. Because the attachments referenced in the email are voluminous, they have been omitted. The referenced attachments were attached to the email, I understand that Mr. Castellanos received them, and Mr. Castellanos never informed me that he did not receive them or otherwise ask me to resubmit them.

27. In May and June 2019, Mr. Castellanos contacted me to request further information. For example, Mr. Castellanos requested documents proving student attendance. I provided the information he requested. A true and accurate copy of emails

regarding Mr. Castellanos' request for student attendance documentation is attached hereto as **Exhibit G**.

28. In July 2019, at Mr. Castellanos' request, I sent hard copy documentation to DOE, including Institutional Student Information Records for undergraduate students receiving FSA in Spring semester 2019. A true and accurate copy of an email chain with Mr. Castellanos discussing the hard copy documentation is attached hereto as **Exhibit H**.

29. On July 18, 2019, I emailed Mr. Castellanos an updated HCM2 submission requesting reimbursement for FSA disbursed to ASOT undergraduate students for the Spring semester 2019. Attached to my email was a spreadsheet providing the names, identifying information, eligibility information, and FSA award amounts for the students. A true and accurate copy of the updated HCM2 submission is attached hereto as **Exhibit I**. For student privacy and pursuant to applicable law, student identifying information has been redacted.

30. The spreadsheet attached to the updated HCM2 submission (the "Spreadsheet") was created with information recorded at or near the time Spring semester 2019 FSA was awarded to students and with information transmitted by a person with knowledge of the awards. The information in the Spreadsheet was kept in the course of ASOT's administrative and financial activities, which are regularly conducted activity at ASOT. It is the regular practice of ASOT to record FSA awarded to students and the disbursement of funds to students, and the information in the Spreadsheet was collected as part of that regular practice. In my role as Executive Assistant to the President, I am

familiar with the amount of FSA money awarded to ASOT students. I believe the information reflected in the Spreadsheet, including the amount of FSA amounts, is accurate and I have no reason to believe that any information in the Spreadsheet is inaccurate.

31. I understand that for the Spring semester 2019, ASOT awarded \$1,411,207 to undergraduate students, broken out as follows:

- a. \$554,143.00 in Federal Pell Grants;
- b. \$493,923 in subsidized Direct Loans; and
- c. \$363,141 in subsidized Direct Loans.

See Exhibit I, Spreadsheet attached thereto.

32. On July 25, 2019, I emailed an updated Form 270 to Mr. Castellanos in connection with the updated HCM2 submission. A true and accurate copy of my email and the attached Form 270 are attached hereto as **Exhibit J**.

33. From the time that I sent the HCM2 submission on April 30, 2019 through my discussions with Mr. Castellanos in May, June, and July 2019 and through the transmission of the updated HCM2 submission, I understood that DOE was processing ASOT's request for reimbursement. Neither Mr. Castellanos nor any DOE representative gave me any indication that ASOT's reimbursement request would not be timely processed during that time period.

34. On August 21, 2019, I emailed Mr. Castellanos to request an update on the status of ASOT's request for reimbursement. On August 22, 2019, Mr. Castellanos

responded: “I do not have an update for you at the moment. Please contact me on 8/30/19 and I should have more information for you.” That same day, I responded that ASOT is “not in a position to wait” until August 30, 2019 and that ASOT may be forced to close if DOE continues to delay reimbursement. A true and accurate copy of my email chain with Mr. Castellanos regarding the status of the HCM2 request is attached hereto as **Exhibit K.**

35. On August 26, 2019, Mr. Castellanos emailed me and stated that DOE intends to delay processing ASOT’s reimbursement request. Mr. Castellanos stated that DOE’s “review may extend beyond 30 days” and the delay was “[d]ue to the extent of the OIG investigation.” See Exhibit K. This was the first time anyone from DOE told me that ASOT’s HCM2 submission was being delayed for any reason, let alone for an unrelated OIG investigation.

36. Following Mr. Castellanos’ August 26, 2019 email, no DOE representative has ever requested any additional documentation from ASOT, whether in connection with the HCM2 submission or otherwise.

37. On August 26, 2019, I emailed Mr. Castellanos and Vinita Simpson, Mr. Castellanos’ Compliance Manager, requesting that DOE provide an estimate as to when its review of ASOT’s reimbursement request would be completed. On that same day, Ms. Simpson responded, stating: “[u]nfortunately, we are not able to give an estimate.” See Exhibit K.

38. I was surprised by Ms. Simpson's response for several reasons. Notably, I had been under the impression that Mr. Castellanos understood ASOT's financial position and inability to fund another semester of FSA without the reimbursement. Further, ASOT maintains a bank account where DOE has, in the past, disbursed FSA funds. ASOT can see that DOE has already deposited funds into that account. However, DOE has not released those funds.

39. ASOT does not have sufficient institutional funds to disburse to its students another semester of FSA prior to receiving reimbursement from DOE for the Spring semester 2019 FSA disbursements. At this time, ASOT has approximately \$1.6 Million in cash reserves, well short of the amount of money needed to fund a semester of FSA for ASOT.

40. I understand that as an institution of higher education, if ASOT expects that it may cease operations, it is required to execute a "teach-out" plan whereby it will inform its students of the impending closure and works with students in connection with finishing their studies at another institution. At this time, ASOT has begun executing a teach-out plan in order to implement the plan before the Spring semester 2020.

I declare under penalty of perjury that the foregoing is true and correct.


Reginald High

09-16-19
Date Executed